

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA

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CLARENCE MADDOX  
CLERK U.S. DIST. CT.  
S.D. OF FLA. - MIA

UNITED STATES OF AMERICA,

Plaintiff

v.

LABIB BALTAGI, INC., d/b/a JACKSON  
HEWITT TAX SERVICES, INC., AHMAD  
LABIB BALTAGI, LUCILLE BALTAGI,  
MARK BALTAGI, and VELONA LAWRENCE

Defendants

06 - 20949

CIV - COOKE

COMPLAINT

MAGISTRATE JUDGE

The United States of America, for its complaint, alleges as follows: BROWN

1. This is a civil action brought pursuant to 26 U.S.C. §§ 7402, 7407, and 7408 to: (1) permanently enjoin the defendants Labib Baltagi Inc., individually and doing business as Jackson Hewitt Tax Services; Lucille Baltagi; Mark Baltagi; Velona Lawrence; and Ahmad Labib Baltagi, a/k/a Labib Baltagi; from preparing federal income tax returns that understate tax liability by frivolously asserting that per capita distributions of gaming proceeds paid to members of Native American tribes that operate casinos are exempt from taxation, (2) permanently enjoin defendants from advising, counseling, or aiding and abetting customers from taking such frivolous or other unrealistic positions on tax returns; (3) permanently enjoin defendants from obstructing any current or future IRS investigation; (4) compel defendants to provide a list of all customers for whom they have prepared returns which assert that income received by Native Americans is exempt from

taxation; and (5) compel defendants Ahmed Labib Baltagi, Lucille Baltagi, Mark Baltagi, and Labib Baltagi, Inc. d/b/a Jackson Hewitt Tax Services to advise their customers that returns which assert that per capita distributions of gaming proceeds are exempt from taxation pursuant to a Native American Treaty are incorrect and need to be amended.

#### Jurisdiction

2. This action has been requested by the Chief Counsel of the Internal Revenue Service (IRS), a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General of the United States, pursuant to 26 U.S.C. §§ 7402, 7407, and 7408.
3. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340, 1345 and 26 U.S.C. §§ 7402(a), 7407, and 7408.

#### Venue

4. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1396 because the defendants reside in this judicial district.

#### Defendants

5. Defendant Labib Baltagi Inc. d/b/a Jackson Hewitt Tax Services (“LB”) is located at 701 N.E. 125<sup>th</sup> Street, Miami, Florida 33161. LB is a franchisee of Jackson Hewitt Tax Services, Inc. (“JH”), which is headquartered in Parsippany, New Jersey. LB operates under a franchise agreement with JH and is in the business of preparing and filing federal income tax returns for customers for a fee. On information and belief, LB charges customers between \$120 and \$180 to prepare federal income tax returns. On information and belief, during tax season, defendant LB operates JH offices at approximately 20

locations and employs approximately 150 tax preparers.

6. Defendant Ahmad Labib Baltagi (“Labib Baltagi”) is a resident of Miami, Florida. Labib Baltagi is the owner and operator of defendant LB, and through LB owns and operates approximately 20 Jackson Hewitt offices in Dade and Broward Counties. Labib Baltagi is a certified public accountant and has a master’s degree in accounting from Florida International University and a master’s degree in management from Thunderbird University. On information and belief, Labib Baltagi has been the business of preparing tax returns since 1983.
7. Defendant Lucille Baltagi is a resident of Miami, Florida and is married to defendant Labib Baltagi. Lucille Baltagi has worked as a tax preparer at JH franchises for approximately 9 years. On information and belief, in addition to preparing federal income tax returns at offices of the LB franchise owned and operated by her husband, Lucille Baltagi is the owner and operator of one or more separate JH franchises in the Miami area. In addition, Lucille Baltagi is a member of the National Association of Tax Preparers. Although Lucille Baltagi has no formal training in accounting or tax, she claims to keep current on tax issues by attending JH tax training seminars. On information and belief, she manages and teaches classes in tax preparation for LB employees.
8. Defendant Mark Baltagi is a resident of Miami, Florida and is the son of Labib and Lucille Baltagi. Mark Baltagi has worked as a tax preparer at LB offices.
9. Defendant Velona Lawrence is a resident of Opa Locka, Florida. Lawrence has worked as a tax preparer at LB offices.

Allegations Common To All Counts

A. Defendants Prepared and Filed Federal Income Tax Returns For Several Seminole Indians That Frivolously Claimed that Per Capita Distributions of Gaming Proceeds Paid Were Not Subject to Federal Income Taxes

10. The IRS has thus far identified 32 federal income tax returns prepared by defendants or defendants' employees that understated the tax liability of several members of the Seminole Tribe of Florida by claiming that per capita distributions of gaming proceeds was exempt from federal income tax. The IRS is currently investigating whether defendants or defendants' employees prepared additional returns making this frivolous claim.
11. Income earned by Native Americans is taxable to the same extent as income earned by any other person living in the United States. *See Squire v. Capoeman*, 351 U.S. 1, 6 (1956). Indeed, the only time income received by a Native American is exempt from taxation is when there is "a clearly expressed" exemption to the tax laws. *Squire v. Capoeman*, 351 U.S. at 6; see also *Chickasaw Nation v. United States*, 534 U.S. 84, \_\_\_, 122 S.Ct. 528, 535-36 (2001) (citing cases).
12. There is no treaty or statute that exempts distributions from casino earnings from federal income tax. To the contrary, the statute that regulates Native American gaming activities, the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.*, expressly states that all per capita distributions of gaming proceeds made to tribe members are subject to federal income taxes. Indeed, Section 2710 of Title 25 states that tribes may make per capita distributions of casino proceeds to members *only if* "the per capita payments are subject

to Federal taxation and tribes notify members of such tax liability when payments are made.” 25 U.S.C. § 2710(b)(3)(D). Furthermore, two publications available on the IRS website clearly indicate that per capita distributions of casino proceeds are subject to federal income tax. See IRS Pub. 3908: *Gaming Tax Law*, <http://www.irs.gov/govt/tribes/article/0,,id=140000,00.html>, and *FAQs Regarding Gambling Winnings: What are allocations under the IGRA?*, <http://www.irs.gov/govt/tribes/article/0,,id=108436,00.html#A6>.

13. The Seminole Tribe of Florida owns and operates casinos. In accordance with the Indian Gaming Regulatory Act, the Seminole Tribe withholds federal income taxes from the per capita distributions of gaming proceeds it makes to its members. The Seminole Tribe reports this income and the federal income tax withheld to the IRS and individual members of the Seminole Tribe by issuing a 1099-MISC Form (“1099 Forms”) for each Tribe member.
14. On information and belief, at all relevant times, the 1099 Forms issued by the Seminole Tribe advised tribe members that the casino distributions were taxable. At all relevant times, the 1099 Forms issued by the Seminole Tribe stated:

This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a tax return, a negligence penalty or other sanction may be imposed upon you if this income is taxable and the IRS determines that it is not reported.

15. The 1099 Forms that the Seminole Tribe issued also advised the recipients of the dollar amount of casino distributions that they received during the year and advised recipients that: “[g]enerally, report this amount on the ‘Other income’ line of Form 1040 and

identify the payment.”

16. The 1099 Forms issued by the Seminole Tribe also provided the recipients with the name and telephone number of a person whom they could contact in the event that they had any questions about the 1099 Form or the information contained on the 1099 Form.
17. The first known example of defendant’s misconduct involves a tax return prepared for a minor member of the Seminole Tribe. In early 2003, the mother of a Florida Seminole Tribe member visited an LB office to have a 2002 federal income tax returned for her minor son.
18. On information and belief, the only income that the minor son received in 2002 was a per capita distribution of gaming proceeds from the Seminole Tribe in the amount of \$36,000. The Seminole Tribe issued a 1099 Form to the son that indicated that he had received a per capita distribution of \$36,000 and that the Seminole Tribe had withheld \$9,000 from this distribution.
19. An LB employee prepared a 2002 federal income tax return for the son that did not report the \$36,000 income on line 21 of the return form, which provides a space for reporting “other income,” or anywhere else on the return. Instead, the return falsely reported that the son had no income. Moreover, the return reported that \$9,000 had been withheld and improperly requested that the \$9,000 be refunded.
20. The return that LB prepared for the son thus understated his correct income tax liability by \$9,000.
21. The IRS has thus far identified 32 federal income tax returns prepared by defendants, or defendants’ employees, that understated Seminole Tribe members’ tax liabilities by

taking the frivolous and unrealistic position that all per capita gaming distributions the members received were exempt from taxation as a result of a Native American Treaty.

22. On the vast majority of these 32 returns, defendants or defendants' employees reported the gaming proceeds paid to the customer on Line 21 of the customer's income tax return. However, defendants or their employees also included a notation on Line 21 falsely stating that the gaming proceeds were exempt from tax pursuant to a Native American Treaty. These returns also improperly requested refunds of the federal income taxes withheld by the Seminole Tribe.

B. Harm To United States

23. The frivolous positions that defendants and defendants' employees asserted on the returns of the Seminole Tribe members caused substantial harm to the United States Treasury. The U.S. Treasury issued erroneous refunds in connection with these 32 tax returns totaling approximately of \$222,374.
24. Defendant Mark Baltagi prepared at least eight federal income tax returns that improperly asserted that Seminole Tribe members' per capita distributions of gaming proceeds were exempt from tax. Together, these returns deprived the U.S. Treasury of approximately \$44,508.
25. Defendant Velona Lawrence prepared at least nine federal income tax returns that improperly asserted that Seminole Tribe members' per capita distributions of gaming proceeds were exempt from tax. Together, these returns deprived the U.S. Treasury of approximately \$52,862.
26. Although defendant Lucille Baltagi did not sign any of the 32 tax returns that frivolously

asserted that per capita gaming distributions are not taxable, many of the returns identified Lucille Baltagi as the customer's third-party designee, with authority to discuss the return with the IRS. Upon information and belief, Lucille Baltagi supervised the preparation of these 32 returns and advised LB employees to treat the per capita distributions of gaming proceeds as exempt from taxation.

27. Although Labib Baltagi did not sign any of the 32 tax returns that frivolously asserted that per capita gaming distributions are not taxable, on information and belief, he supervised all the LB employees who prepared those returns and directed those employees to assert that the per capita distributions of gaming proceeds were exempt from federal income taxes.

C. Defendants Did Not Cooperate With The IRS Investigation

28. In August 2004, as part of the IRS's investigation of these frivolous returns, Revenue Agent James Keelon ("Agent Keelon") interviewed defendants Lucille Baltagi, Mark Baltagi, and Velona Lawrence.
29. On information and belief, Lucille Baltagi and Mark Baltagi did not respond truthfully to Agent Keelon's questions. During the interviews, Lucille Baltagi and Mark Baltagi told Agent Keelon that before preparing any of the 32 frivolous returns, they contacted the JH Support Center and the IRS regarding the proper tax treatment of per capita distributions of gaming proceeds. Both Lucille Baltagi and Mark Baltagi claimed that JH's Support Center and the IRS advised them that per capita distributions of gaming proceeds paid to Native Americans are not subject to federal income taxes. However, neither Lucille Baltagi nor Mark Baltagi could produce any notes or other documentation to substantiate



their claims.

30. Lucille Baltagi's statements regarding the advice she received from JH's Support Center are inconsistent with the records kept by JH's Support Center. JH provides Support Center employees with written instructions on how to answer a variety of tax questions, including the tax treatment of per capita distributions of gaming proceeds paid to Native American tribe members. The written instructions regarding the tax treatment of per capita distributions of gaming proceeds clearly indicate that such income is taxable. A correct copy of those instructions is attached as Exhibit A. The JH Support Center telephone log confirms that Lucille Baltagi called the JH Support Center on February 14, 2003 to ask how to treat income reported to Native Americans on the 1099 Forms issued by the Seminole Tribe. However, the written instructions used by JH Support Center personnel plainly indicate that this income was taxable.
31. Likewise, Lucille Baltagi's assertion that the IRS advised her that gaming proceeds were exempt from taxation is not credible. In May 2002, the IRS published Publication 3908, which provides guidance to Native Americans and others regarding the tax treatment of gaming proceeds. Publication 3908 clearly states that per capita distributions of gaming proceeds to individual tribe members are subject to federal income taxes.
32. On information and belief, Mark Baltagi was also dishonest with Agent Keelon regarding his efforts to obtain guidance regarding the tax treatment of per-capita distributions of gaming proceeds. Although Mark Baltagi advised Agent Keelon that he obtained advice from the JH Support Center, the JH Support Center has no record of receiving such an inquiry from Mark Baltagi. Likewise, for the reasons set forth in paragraph 31, it is

unlikely that the IRS advised Mark Baltagi that per capita distributions of gaming proceeds were exempt from federal income taxes.

33. On information and belief, Lucille Baltagi also misled Agent Keelon about defendants' ability to identify tax returns that claimed that per capita distributions of gaming proceeds were exempt from federal income taxes. In response to Agent Keelon's request for a list of LB customers for whom defendants had prepared tax returns claiming a Native American Treaty exemption, Lucille Baltagi claimed that defendants could not perform an electronic search of the returns that they had prepared. On information and belief, all JH franchises are required to use, and do use, JH proprietary software to prepare all federal income tax returns, and electronic copies of these income tax returns reside on JH servers. JH has the ability to conduct computerized searches of these income tax returns. LB could have had JH search the returns prepared by defendants and identify the returns that claimed that income was exempt from taxation as a result of a Native American Treaty. Defendants, however, did not ask JH to perform such a search and did not perform such a search themselves in response to Agent Keelon's request for a customer list.
34. By letter dated March 17, 2006, the Department of Justice advised defendants that it intended to institute this action. In response to this letter, on March 21, 2006, defendant Lucille Baltagi contacted the Department of Justice and falsely asserted that defendants had prepared amended returns on behalf of the customers for whom they had prepared returns claiming that per capita distributions of gaming proceeds were exempt from taxation.

35. The defendants thus obstructed the IRS's investigatory efforts by (1) providing misleading information about the advice that they received from JH and the IRS; (2) failing to provide customer lists in response to IRS requests; and (3) providing inaccurate or misleading information about their claimed inability to identify frivolous returns.
36. As a result of defendants' obstruction of and failure to cooperate with the IRS's investigation, the IRS has been required to spend considerable time and resources in investigating defendants' illegal activities. Thus, defendants have not only deprived the U.S. Treasury of \$222,374 in lawfully owed tax revenue, but have also caused the IRS to expend substantial time and resources to identify frivolous tax returns that defendants prepared and could apparently identify without undue burden.

D. Defendants Have Failed To Take Appropriate Corrective Measures

37. As a result of their August 2004 interviews with Agent Keelon, defendants were on notice that the IRS had discovered that they had submitted frivolous tax returns on behalf of their customers.
38. Moreover, after the IRS advised JH that several JH franchises had prepared tax returns which improperly characterized gaming proceeds as exempt from taxation, JH sent an e-mail dated March 25, 2005, to numerous franchises, including LB, which clearly stated that per capita distributions of gaming proceeds received by Native Americans are subject to federal income tax. This March 25, 2005 e-mail also advised the franchises, including LB, that it might be necessary to amend returns prepared for certain customers. A copy of that email is attached as Ex. B. Furthermore, the e-mail included an attachment which identified the customers whose returns needed to be reviewed. JH e-mail records

indicate that this email was sent to defendant LB. Moreover, the email sent to LB included a list of customers whose tax returns should be reviewed.

39. Thus, both the IRS and JH provided defendants with clear notice that the income tax returns which sought refunds of taxes withheld on per capita distributions of gaming proceeds were improperly prepared. Defendants did not, however, advise their customers that they may need to amend their federal income tax returns after receiving this notice.
40. Moreover, defendants prepared at least one tax return that improperly and frivolously asserted that per capita distributions of gaming proceeds were exempt even after Agent Keelon interviewed defendants Lucille Baltagi, Mark Baltagi, and Velona Lawrence. Several months after the August 2004 meetings with Agent Keelon, a tax preparer working at LB prepared a federal income tax return for a Seminole Tribe member, which falsely asserted that the per capita distribution of gaming proceeds that the member received from the Tribe was exempt from taxation pursuant to a Native American Treaty. This return identified defendant Lucille Baltagi as the customer's third-party designee, who would represent the customer in dealings with the IRS.
41. Furthermore, in August 2005, a year after speaking with Agent Keelon and several months after JH sent the March 25, 2005 e-mail to its franchises, defendant Labib Baltagi advised Agent Keelon that defendants had not contacted their customers regarding the need to file amended returns.
42. Upon information and belief, defendants took no action to correct the frivolous returns that they prepared and filed prior to being advised by the Department of Justice that it

intended to file this lawsuit. Their failure to promptly notify their clients regarding the need to file amended returns has subjected their clients to additional interest on their outstanding tax liabilities.

43. Defendants continue to prepare and file federal tax returns for customers.

#### COUNT I

##### Request for An Injunction Pursuant to 26 U.S.C. § 7407(b)(1) Enjoining Defendants From Engaging In Prohibited Conduct

44. The United States incorporates by reference the allegations in paragraphs 1-43.
45. Pursuant to 26 U.S.C. § 7407(b), the United States may obtain an injunction prohibiting a tax preparer from engaging in certain specified prohibited conduct.
46. Under § 7407(b)(1)(A), the United States may obtain an injunction enjoining a party from engaging “in any conduct subject to penalty under 26 U.S.C. § 6694.”
47. Section 6694(a) authorizes the imposition of penalties against tax preparers for preparing tax returns that understate tax liability based on positions that have no realistic possibility of being sustained, 26 U.S.C. § 6694(a)(1), where the tax preparer knew or should have known that the position would not be sustained, 26 U.S.C. § 6694(a)(2), and the position taken was either not disclosed to the IRS or was frivolous. 26 U.S.C. § 6694(a)(3).
48. Section 6694(b) authorizes the imposition of penalties against tax preparers who willfully or recklessly prepare tax returns that understate tax liabilities.
49. All defendants have engaged in conduct subject to penalties under 26 U.S.C. § 6694(a) and 26 U.S.C. § 6694(b) because, in their capacity as tax preparers, they have prepared and submitted at least 32 federal income tax returns that understated the tax liability of

several members of the Seminole Tribe by asserting that per capita distributions of gaming proceeds are not taxable. Defendants are liable for penalties pursuant to section 6694(a) because they either knew or should have known that this position did not have a realistic possibility of being sustained because it was frivolous. Furthermore, defendants are liable for penalties pursuant to section 6694(b) because they acted willfully or with reckless or intentional disregard of the applicable laws, rules and regulations.

50. Under § 7407(b)(1)(D), the United States may obtain an injunction enjoining a party from engaging “in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the Internal Revenue laws,” if such an injunction is necessary to prevent the recurrence of this conduct.
51. Defendants LB, Labib Baltagi, Lucille Baltagi, and Mark Baltagi have engaged in fraudulent and deceptive conduct in carrying out their frivolous scheme and in attempting to impede and obstruct IRS efforts to investigate it. Specifically, defendants have obstructed the IRS investigation by: (1) providing inaccurate information to Revenue Agent Keelon regarding the advice that they received from JH, (2) refusing to provide a list of customers for whom they have prepared returns that improperly assert that per capita distributions of gaming proceeds are exempt from federal taxation, and (3) falsely telling Keelon that they could not provide such a list. In addition, by failing to contact the customers for whom they have filed frivolous returns, despite being advised by the IRS and JH that their position was incorrect, defendants have concealed material information from their customers.

52. Accordingly, pursuant to 26 U.S.C. § 7407(b)(1)(A) and 26 U.S.C. § 7407(b)(1)(D), the United States requests the Court to enter an injunction that:
- a. prohibits defendants from engaging in conduct subject to penalty under 26 U.S.C. §§ 6694 by preparing or filing tax returns that assert unrealistic positions, including preparing returns asserting the frivolous position that per capita distributions paid to individual members of any Native American Tribe are exempt from tax; and prohibits defendants from counseling, advising, or assisting in the preparation or filing of any such return,
  - b. prohibits defendants from taking any action that interferes with the prompt and efficient administration or enforcement of the internal revenue laws and,
  - c. prohibits defendants from responding untruthfully to questions or requests for documents from the IRS and ,
  - d. requires defendants to give to the United States a complete and accurate list of all customers for whom they have prepared tax returns that claim that per capita distributions paid to individual members of any Native American Tribe are exempt from taxation.

## COUNT II

### Request for An Injunction Pursuant to 26 U.S.C. § 7408 Enjoining Defendants From Engaging In Prohibited Conduct

53. The United States incorporates by reference the allegations in paragraphs 1-52.
54. Pursuant to 26 U.S.C. § 7408, the United States may obtain an injunction prohibiting a person from engaging in conduct subject to penalty under 26 U.S.C. § 6701 (which

penalizes persons who aid or abet the understatement of another person's tax liability) if an injunction is necessary to prevent the recurrence of this conduct. *See* 26 U.S.C. § 7408(a)-(c).

55. Defendants engaged in conduct subject to penalties under 26 U.S.C. § 6701 because they have prepared and submitted at least 32 federal income tax returns that understated the tax liabilities of several members of the Seminole Tribe by frivolously asserting that per capita distributions of gaming proceeds are not taxable.
56. Accordingly, pursuant to 26 U.S.C. § 7408, the United States respectfully requests the Court to enter an injunction which:
  - a. prohibits defendants from engaging in conduct subject to penalty under 26 U.S.C. § 6701, including preparing tax returns that assert that per capita distributions paid to individual members of any Native American Tribe are exempt from tax, and
  - b. prohibits defendants from engaging in any other conduct subject to penalty under any provision of the Internal Revenue Code.

### COUNT III

#### Request for An Injunction Pursuant to 26 U.S.C. § 7402(a)

57. The United States incorporates by reference the allegations in paragraphs 1-56.
58. Pursuant to 26 U.S.C. § 7402(a), the United States may obtain an injunction "as may be necessary or appropriate for the enforcement of the internal revenue laws." The remedies available pursuant to the United States pursuant to section 7402(a) are "in addition to and not exclusive of any and all other remedies of the United States." 26 U.S.C. § 7402(a).
59. As described above, defendants' actions have substantially interfered with the IRS's



ability to enforce the internal revenue laws.

60. Defendants LB, Labib Baltagi, Lucille Baltagi, and Mark Baltagi have obstructed and interfered with the IRS's investigation by providing inaccurate and misleading information to Revenue Agent Keelon regarding the advice that they received from JH's Support Center and the IRS. Defendants further obstructed and delayed the IRS investigation by refusing to provide the IRS with a list of customers for whom they prepared frivolous returns, which in turn, impeded the IRS's efforts to identify all the frivolous returns prepared by defendants (and/or those acting under their supervision). Defendants' failure to provide a list of customers for whom they prepared and filed frivolous returns impeded the IRS's efforts to assess and collect the income taxes lawfully due from the defendants' customers.
61. Defendants' failure to notify their customers regarding the need to file amended tax returns has interfered with the administration of the internal revenue laws by needlessly delaying, if not precluding, the timely assessment and collection of the federal income taxes these customers owe.
62. The injunctive relief requested by the United States will not harm defendants. Indeed, there is no legally cognizable harm that results from being compelled to obey the law.
63. However, the United States will suffer irreparable harm in the absence of injunctive relief. In the absence of the injunctive relief requested by the United States, the IRS will likely be forced to continue to devote resources to identifying unrealistic and frivolous returns prepared by defendants and defendants' employees. Moreover, defendants' actions have and will continue to harm the United States by interfering with the proper

and efficient administration of the revenue laws. The harm caused to the United States is likely to be irreparable as the United States may not be able to assess or collect all the taxes, interest, and penalties that defendants' customers owe to the United States.

64. In addition, defendants' action have and will continue to harm the interests of their customers, and this harm will continue in the absence of injunctive relief. As a result of defendants' actions, defendants' customers may be liable for penalties for filing inaccurate and frivolous tax returns and will also be liable for interest owed on taxes that they have not timely paid or erroneous refunds they received. This harm is continuing because the interest on these tax debts is compounded daily. Accordingly, defendants' failure to cooperate with the IRS investigation and their failure to notify their customers of the need to file amended returns is causing continuing harm to their customers, which will continue in the absence of injunctive relief.
65. Injunctive relief will serve the public interest by preventing the defendants' from (1) obstructing the IRS investigation; (2) interfering with the prompt and efficient administration of the revenue laws, and (3) interfering with the prompt and efficient assessment and collection of revenue. Injunctive relief will also deter defendants from taking frivolous positions when preparing tax returns in the future.
66. Therefore, pursuant to 26 U.S.C. § 7402(a), the United States respectfully requests the Court to enter an injunction that:
  - a. prohibits defendants from preparing or filing tax returns that assert that per capita distributions paid to individual members of any Native American Tribe are exempt from tax; and from counseling, advising, or advocating the preparation or

- filing of any such return,
- b. prohibits defendants from preparing or filing any frivolous tax returns,
  - c. prohibits defendants from taking any action that interferes with the prompt and efficient administration or enforcement of the revenue laws,
  - d. compels defendants to cooperate with this and any future investigation initiated by the IRS by responding fully and truthfully to any questions or requests for documents and by providing the IRS with a complete and accurate list of all clients for whom they prepared tax returns which claim that per capita distributions paid to individual members of any Native American Tribe are exempt from taxation and,
  - e. compels defendants LB, Labib Baltagi, Lucille Baltagi, and/or Mark Baltagi, to notify their customers, at their expense, that any return which claimed that per capita distributions of gaming proceeds are exempt from federal income taxes asserted a position that is frivolous and unrealistic and needs to be amended.

WHEREFORE, the United States respectfully prays for the following relief:

- A. That the Court find that defendants have engaged in conduct subject to penalty under 26 U.S.C. §§ 6694 and 6701;
- B. That the Court enter an injunction, pursuant to 26 U.S.C. §§ 7402(a); 7407; and 7408, that prohibits defendants from preparing or filing tax returns that assert frivolous or unrealistic positions, including preparing tax returns that assert that per capita distributions of gaming proceeds paid to individual members of any Native American Tribe are exempt from tax; and from counseling, advising, assisting in, or advocating the

preparation or filing of any such return;


- C. That the Court enter an injunction pursuant to 26 U.S.C. §§ 7402(a) and 7407 that prohibits defendants from attempting to perpetuate the frivolous positions taken on the tax returns that they have prepared by misleading the IRS or obstructing or otherwise interfering with an IRS investigation;
- D. That the Court enter an injunction compelling defendants to produce to counsel for the United States, within 10 days of the Court's order, a list of all customers for whom they prepared income tax returns that asserted that any income, of whatever kind, was exempt from taxation due to a purported "Native American Treaty," and for each such customer, provide the customer's name, social security number, address, e-mail address, telephone number, and the year(s) for which such returns were filed;
- E. That the Court enter an injunction compelling defendants to produce to counsel for the United States copies of all federal income tax returns, including amended returns, they prepared that claim that any income is exempt from tax pursuant to a Native American Treaty;
- F. That the Court enter an injunction compelling defendants LB, Labib Baltagi, Lucille Baltagi and Mark Baltagi, at their expense, to notify their affected customers, by U.S. mail within 10 days of the Court's order, of the Court's injunction against them, to enclose a copy of the injunction, and to advise the customers that all per capita distributions of gaming proceeds are subject to federal income taxes and that any income tax return that claimed that income earned by Native Americans was exempt from taxation due a Native American Treaty may need to be amended. For the purposes of the

Court's order, "affected customers" mean all customers for whom defendants and their employees prepared federal income tax returns which claimed that income was exempt from taxation pursuant to a Native American Treaty;

- G. That the Court retain jurisdiction over defendants for the purpose of enforcing any permanent injunction;
- H. That the Court grant the United States the right to conduct post-judgment discovery for the purpose of monitoring defendants' compliance with the terms of any injunction;
- I. That the Court grant the United States all other relief, including costs and fees, as it deems just and equitable.

Respectfully submitted,

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Dated: April 12, 2006

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## Successful Resolution

### Resolution Summary:

FED: 1099-MISC - Indian Gaming Profits

### Resolution Details:

FED: 1099-MISC - Indian Gaming Profits

## TY 2004

### In Interview:

To report these amounts you will need to indicate Other Income in the Sources of Income section and Form 1099-Misc in Additional Sources of Income section.

In the 1099-Misc section enter the payor information, select "Other Income (Form 1040)" for the type of income, and the description of the income (Indian Gaming Profits for example) then complete the popup Form 1099-Misc to match that received by the taxpayer. Be sure to include the EIN of the payor.

The "Other Income and Deductions" section of the interview should already have a checkmark next to Other Unearned Income, if not please checkmark it.

In the Other Unearned Income section select code "V" (Indian Gaming Proceeds).

If this is a dependent child and they are a dependent on another return then there may be AMT, this is correct.

Also, remember the parent's still have to pass the support test to claim the dependent exemption.

### In Forms:

There are two possible approaches, the main reason for selecting one method over the other would be if the Form 1099-Misc includes federal withholding tax then the second approach should be used.

#### Method 1 (No federal withholding):

Drill down from line 21 Form 1040 to the Form 1040/Form 1040NR - Other Income worksheet. Click on the drilldown on Ln 24 of the worksheet and enter the Indian Gaming Proceeds amount. Once again you will select Code V. You may also state source the income as needed.

#### Method 2 (With or without federal withholding):

Use the Add Form button to add a new Form 1099-Misc. Complete the form as appropriate, including the withholding and the payor's EIN. Source to state as appropriate also.

## TY 2003:

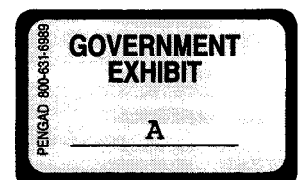
### In Interview:

To report these amounts you will need to indicate 1099-Misc and Other Income in the Sources of Income section.

In the 1099-MISC section indicate entries in boxes 3 and 4 and enter the withholding amount for box 4.

In Other Income choose "Other Unearned Income" and give it a code "V".

### In Forms:



Drill down from line 21 Form 1040 and enter the Indian Gaming. Drill down to enter the withholdings from the 1099-MISC.



**Lewis, Steve**

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**From:** Lewis, Steve  
**Sent:** Friday, March 25, 2005 9:15 AM  
**To:** Tateosian, Eric; Dieterich, Grace  
**Cc:** Leonard, Phil; Geraci, Michele; Steber, Mark  
**Subject:** RE: E-mail Text for Queries.

Looks fine to me - Once I get the Ok I will work with Phil's group to get the spreadsheet finalized and e-mail sent.

Steve Lewis  
Federal Tax Analyst  
Jackson Hewitt  
941-378-7157

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**From:** Tateosian, Eric  
**Sent:** Friday, March 25, 2005 9:08 AM  
**To:** Dieterich, Grace; Lewis, Steve  
**Cc:** Leonard, Phil; Geraci, Michele; Steber, Mark  
**Subject:** RE: E-mail Text for Queries.

I made changes.

**TO:**  
**FROM:** Jackson Hewitt Tax Center  
**DATE:** March 25, 2005  
**RE:** Native American Treaty

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Jackson Hewitt has been notified by the IRS that a limited number of preparers may have incorrectly classified Indian Gaming proceeds as a negative other income adjustment labeled Native American Treaty. Generally, Native Americans are taxed in the same manner as other Americans. Certain income types, such as Income from restricted lands held under trust patent or hunting and fishing, may be excluded from income. However, income from gaming proceeds is taxable and subject to withholding.

Gaming proceeds are reported on Form 1099-MISC and should be included on line 21 of Form 1040. The income should be labeled Indian Gaming Proceeds.

When income is not considered taxable under the Native American Treaty, report the income amount on the proper form and/or schedule with a negative adjustment on Form 1040, line 21. The income should be labeled Native American Treaty.

Jackson Hewitt has identified potential taxpayers who may have been affected for Tax Years 2002, 2003, and 2004. A listing of those taxpayers whose tax returns may need to be amended from your Processing Center is contained in the excel spreadsheet attached to this e-mail.

Please contact the Support Center at 1-800-668-8264 or supportcenter@jtax.com if you have questions or need assistance.

